IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Mat.Appeal.No. 229 of 2006()

OP.847/2000 of FAMILY COURT,THRISSUR
.....

PETITIONER: APPELLANT

RAVEENDRAN, AGED 49 YEARS,
S/O.KOLLARA MADHAVAN, CHENGALOOR VILLAGE,
MUKUNDAPURAM TALUK, REP. BY NEXT FRIEND
MOTHER KARTHIYANI.

BY ADV. SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENTS:
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1. SOBHANA, AGED 42 YEARS,
D/O.OTTARATHIL VELAYUDHAN,
MANDAMANGALAM VILLAGE, VALLUR DESOM,
MUKUNDAPURAM TALUK.

2. MINOR RAMYA, AGED 19 YEARS,
REP. BY GUARDIAN AND MOTHER SOBHANA,
W/O.OTTARATHIL VELAYUDHAN,
MANDAMANGALAM VILLAGE, VALLUR DESOM,
MUKUNDAPURAM TALUK.

BY ADV. SRI.FEBIN J.VELUKARAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.1535/2006 IN L.A.A. NO. 229/2006

DISMISSED

3.12.2007. SD/- KURIAN JOSEPH, JUDGE.

SD/- HARUN-UL-RASHID, JUDGE.

C.R.

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

Mat.Appeal No.229 of 2006

Dated 3rd December, 2007

J U D G M E N T

Kurian Joseph, J.

What is the jurisdictional obligation of the court in dealing with a suit or other proceedings by or against persons of unsound mind or persons suffering from any mental infirmity by reason of which they are incapable of protecting their interests, is the question arising for consideration in this case.

2. The appeal is directed against the order dated 16.5.2006 in O.P.No.847/2000 on the file of the Family Court, Thrissur. Appellant is the petitioner. Appellant and the first respondent got married on 20.10.1984 and there is a child in their wed-lock. Appellant submits that he is deaf and dumb, and hence the appeal is filed through his mother. The suit is for setting aside the order in M.C.231/99. The Family Court framed an issue as to whether the suit for declaration that the order in M.C.231/99 is null and void, is maintainable.

3. M.C.231/99 is filed by the respondents-wife and

child herein for maintenance. In the said case, the appellant herein is not represented by anybody else. The Family Court on 14.12.1999 passed the following order in the said case :

> "Counselling done. Parties agreed for maintenance at Rs.800/- per month to both petitioners from today. They signed an agreement to that effect before the counsellor. Hence as agreed between the parties the respondent is ordered to pay maintenance at the rate of Rs.400/- per month each to both petitioners from today. 1st petitioner is allowed to receive the amount on behalf of the 2nd petitioner. No costs."

Being a deaf and dumb person and since he suffers from mental infirmity, it is submitted that he could not have given a valid consent without a next friend. The order passed in a proceedings where such a person was not given the assistance of a next friend is null and void. Without a proper enquiry under Order 32 Rule 15 of the Civil Procedure Code, the court could not have passed an order for maintenance, it is submitted.

4. The appellant had also filed an application in the suit for an enquiry under Order 32 Rule 15 of Civil Procedure Code. It is seen that the Family Court has not conducted any enquiry in that regard. The court has observed that in view of the order in M.C.231/99, unless the said order is set aside or cancelled by a competent court, the court is helpless.

5. Inviting reference to the decision of this court in **Kunhamma v. Rosakkutty** (1997(1) KLT 33) it is submitted that being a suit/petition filed by a deaf and dumb person, the court should have conducted a preliminary enquiry before proceeding with the trial. It is submitted that a decree against a deaf and dumb person, who is also suffering from mental infirmity is a nullity, in case it is one prosecuted without appointing a next friend. If a decree is null and void, the prayer for a declaration in that regard is sufficient and it is not necessary even to set aside the same. Reference is invited to the Full Bench decision of this court in **Pankajaksha Kurup v. Fathima** (1998(1) KLT 668). We also note that in the decision reported in **Lakshmi Pillai Parvathi Pillai v. Purushothama Pai** (1965 KLT 57), the Division Bench of this court has taken the view that a fresh suit to set aside such a decree passed against a person suffering from the incapacity referred to above is maintainable. Neither in M.C.231/99 nor in O.P.847/2000, the Family Court has conducted an enquiry as to the mental capacity of the appellant herein or as to whether he is capable of protecting his interest when suing or being sued.

6. Order 32 Rule 15 reads as follows :-

> "15. Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind.--Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued."

The court, before whom a deaf and dumb person or a person suffering from mental infirmity, or a person who is seemingly unable to protect his interest when suing or being sued appears, is bound to conduct a preliminary enquiry before proceeding with the suit as to whether the person is capable of protecting his interests without the assistance of a next friend. **Kunhamma v. Rosakkutty** (supra) is a case where the alleged deaf and dumb person filed a petition before the court for removal of his next friend. In that case, the next friend had already instituted proceedings before the civil court on behalf of the deaf and dumb person. The court, after conducting an enquiry, and on being satisfied that the deaf and dumb person was capable of protecting his interests, removed the next friend. This court, from the records found that it was not clear as to whether the civil court, before removing the next friend had conducted a

proper enquiry, and hence remitted the matter to the civil court with a direction to conduct a proper enquiry. It was observed by this court that "without proper experience or expertise in understanding the gestures and signs given by a deaf and dumb person or without the assistance of an expert in that field, it will be very difficult though not absolutely impossible, to discern and understand the signs and gestures made by a deaf and dumb person, being answers to the questions put to him by the court. Therefore, it is absolutely unsafe for the court to rely upon the gestures and signs given by a deaf and dumb person with regard to the correct and accurate understanding of the answers given by him." Still further, it was observed at paragreph 8 of the said judgment that "Even though the court is not bound to make an elaborate and detailed enquiry with regard to the sanity or otherwise of a person who is alleged to be incapable of looking after his own affairs and under order 32 Rule 15 C.P.C. the scope and ambit of the enquiry is the satisfaction of the court as to whether that person is in fact incapable of looking after his affairs, the enquiry should be judicial enquiry to enable the court to come to satisfactory conclusion as to the mental condition of

the party concerned."

7. A similar question came up for consideration in the decision reported in **Rami Reddi v. Papi Reddy** (AIR 1963 Andra Pradesh 160), wherein it was held that Order 32 Rule 15 applies not only to a person adjudged to be of unsound mind, but also to a person of weak mind.

8. Whether a deaf and dumb person can be said to be a person suffering from mental infirmity and as one entitled to protection of Order 32 Rule 15, is the question to be considered. Mental infirmity is not mental disorder. It is not mental illness or unsoundness of mind or insanity. It only indicates the weakness of intellect, and in the particular context of Order 32 Rule 15, weakness of intellect to the extent of making a person incapable of protecting his interests in the litigation. Thus a person who is not of unsound mind may, yet be a person who is mentally infirm, thus entitling him to the protection under Order 32 Rule 15. In this context, it will be profitable to refer to one of the earliest decisions of the Lahore High Court in **Nanak Chand v. Banarsi Das**(AIR 1930 Lahore 425), wherein it has been held that a deaf mute, who has been leading a family life with his wife and

children and eking his livelihood by grazing cattle, but who could not be understood by ordinary persons who are unacquainted with him, and not capable of understanding such persons is governed by Order 32 Rule 15.

9. Idiocy or unsoundness of mind indicates an abnormal state of mind, whereas mental infirmity only indicates weakness of mental strength. It was in that context, it was held by the Andhra Pradesh High Court in **Ganga Bhavanamma v. Somaraju** (AIR 1957 Andhra Pradesh 938) that the provisions of Lunacy Act applies only to idiots or persons of unsound mind, whereas Order 32 Rule 15 applies to dull-witted persons or persons with lesser degree of intellectual competence. Therefore, inquisition as per the procedure under the Lunacy Act is not required while dealing with persons suffering from mental infirmity. A person who is not adjudged as one of unsound mind under the Lunacy Act is still entitled to the protection under Order 32 Rule 15, if the court is satisfied that the person before the court is incapable of protecting his interests, either by reason of unsoundness of mind or intellectual incompetence due to mental infirmity. In short, as held by the Andhra Pradesh High Court in

Rami Reddy's case (supra), mental infirmity may even be due to physical defects, if such defects render a person incapable of receiving any communication or communicating his wishes or thoughts to others. The scope of enquiry under Order 32 Rule 15 is the assessment of the capability of a person either of unsound mind or suffering from any mental infirmity like deafness or dumbness, as to whether such defects or infirmities or weaknesses would render a person incapable of communicating his views, wishes or thoughts.

10. The decision under Order 32 Rule 15 involves very serious consequences as it results in the rights of a party to conduct his own litigation being taken away, and a guardianship being thrust upon him. In such circumstances, the court has not only the mandatory jurisdiction to enquire into the need for appointment of a next friend, but also the obligation to consider whether the person of unsound mind or of mental infirmity appearing before it is indeed capable of protecting his interests. If that person is not capable of protecting his interests on his own, the court has an obligation to protect his interests by appointing a next friend and if such person is capable of protecting his own

interests, the court has equally an obligation to see that a next friend or guardian is not superimposed on him, thereby depriving him of his right to take his own decisions. In the decision reported in **S.C.Karayalar v. V.Karayalar** (1968 MLJ 150), it was held that holding of an enquiry under Order 32 Rule 15 ...."is thus inescapable and consent cannot vest jurisdiction in Court to dislodge or divest the right of a litigant to conduct his suit, by superimposing a guardian or a next friend."

11. Thus the legal position is that mental infirmity in the context of Order 32 Rule 15 is not mental disorder, insanity or mental illness. Weakness of mind due to any reason, making a person incapable of protecting his interests, is sufficient to unfold the protective umbrella under Order 32 Rule 15. Such infirmity can also be caused by physical defects like deafness or dumbness, whereby a person is made incapable of communicating his wishes, views or thoughts to others who are not acquainted with him. If such a person is before the court in a suit or proceedings either as plaintiff or defendant, the court has a jurisdictional obligation to conduct an enquiry as to whether the person is capable of protecting his own interests. If in the judicial

enquiry, if necessary and if required, conducted with the assistance of an expert, it is found that such person is incapable of protecting his interests in the suit or proceedings before the court, the court has an obligation to appoint a next friend for such person, and if the court on the other hand finds that the person is otherwise capable of protecting his interests without a next friend, the court shall remove the next friend if already available and permit the person, who is alleged to be of unsound mind or suffering from mental infirmity, to conduct the litigation himself. As held by the Supreme Court in **Ram Chandra v. Man Singh** (AIR 1968 SC 954), a decree passed against a minor without appointment of guardian is a nullity. The same principle would apply as far as a person suffering from unsoundness of mind or mental infirmity as referred to in Order 32 Rule 15 is concerned.

12. The Family Court, in the instant case has in fact framed an issue regarding the maintainability of the suit for declaration of the order in M.C.231/99 as null and void. Since the petitioner is admittedly a deaf and dumb person, the court could not have proceeded with the case without conducting an enquiry under Order 32 Rule 15. Depending on the outcome of the

enquiry the matter will have to be further considered in the light of the Full Bench decision of this court in **Pankajaksha Kurup's case**(supra) or in the light of the bench decision in **Lakshmi Pillai Parvathi Pillai's case** (supra). We set aside the order dated 16.5.2006 in O.P.847/2000 and remit the matter to the Family Court, Thrissur. The Family Court shall consider O.P.847/2000 in accordance with law and dispose of the same expeditiously.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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